Elkins Act (32 Stat. 847), an offense punishable by fine only. In March, 1914, the case was tried with the result that the defendant was convicted on fourteen counts and the minimum fine of $1,000 was imposed on each count. In March, 1915, the judgment was affirmed by the Circuit Court of Appeals for the Fifth Circuit (222 Fed. 69).

In the meantime, in July, 1913, the Waters-Pierce Oil Company sold and conveyed all its property and assets to the Pierce Oil Corporation for $5,000,000 in money and $10,500,000 of the common stock of the latter. The money and shares of stock were lodged with trustees who distributed them ratably among the stockholders of the Waters-Pierce Oil Company, and that company thereupon ceased business. The vendee assumed all the vendor's "debts, liabilities, and obligations."

After the conviction of the Waters-Pierce Company an execution was issued to the marshal of the Louisiana district and returned *nulla bona* in August, 1915. This suit was begun in February, 1916. In March, 1917, another execution was issued on the judgment in Louisiana, but directed to the marshal for the Eastern District of Missouri, which was also returned *nulla bona*. In August, 1917, the Government filed an amended complaint setting forth the facts regarding the second execution.

The district court, on March 11, 1918, rendered a decree against three of the stockholders and dismissed the complaint as to the Waters-Pierce Oil Company and the trustees. Said stockholders there-

upon appealed to the Circuit Court of Appeals for the Eighth Circuit, where the decree was affirmed—Circuit Judges Hook and Stone concurring and Wade, district judge, dissenting. The decree against the stockholders was not in excess of the amounts of money they received in the distribution of the proceeds of the sale.

ARGUMENT.

I.

The case is not of the kind reviewable by this court by writ of certiorari.

The power conferred upon this court to review by writ of certiorari the judgments and decrees of courts otherwise final "should be exercised sparingly and with great caution, and only in cases of peculiar gravity and general importance, or in order to secure uniformity of decision." *American Construction Co.* v. *Jacksonville Ry. Co.*, 148 U. S. 372, 383; *Forsyth* v. *Hammond*, 166 U. S. 506, 514; *Fields* v. *United States*, 205 U. S. 292, 296; *Heike* v. *United States*, 227 U. S. 131, 144; *Hamilton Shoe Co.* v. *Wolf Brothers*, 240 U. S. 251, 258.

1. *The case is not of general importance.*—The case is not one of interest to a large number of persons; it involves nothing affecting the relations of this country with foreign nations, and indeed no matter of general interest to the public. As remarked by this court in the *Fields Case, supra*, the case is of importance only to the applicants.

2. *There is no conflict of decision.*—Petitioners do not contend that the decision below is in conflict with that of any other court. Indeed, their petition is based, in part, upon the allegation that the questions of law involved have not been passed on by this court or by any Federal court. (Pet. 11.)

II.

No error was committed by the court below.

1. *A creditor's bill was clearly the appropriate proceeding under the circumstances of the case.*—The judgment against the Waters-Pierce Oil Company in Louisiana was an adjudication that the company was indebted to the United States. The situation is exactly the same as if the judgment had been entered on any civil obligation. Upon the entry thereof the Government became entitled to pursue the same measures to insure collection as in a civil case. This is the clear implication of section 1041 of the Revised Statutes:

> In all criminal or penal causes in which judgment or sentence has been or shall be rendered imposing the payment of a fine or penalty, whether alone or with any other kind of punishment, the said judgment, so far as the fine or penalty is concerned, may be enforced by execution against the property of the defendant in like manner as judgments in civil cases are enforced * * *.

The resort to equity to recover on a judgment in a criminal case is not, as contended by petitioners, new to our jurisprudence. Indeed, the practice

was treated as well settled by the Supreme Court of Appeals of West Virginia in the case of *State* v. *Burkholder,* 30 W. Va. 593, 5 S. E. 439. That was a suit to enforce a judgment for fines and costs against certain property which Burkholder had conveyed to his wife prior to the entry of the judgment. In sustaining the suit the court said:

> We have cited enough authority to show that an individual can no more be permitted to defraud the State in a conveyance than he can a person; that where a person conveys his property with intent to defraud his creditors, and the State is one of those creditors, both reason and authority show that the State can maintain a suit to have that conveyance declared fraudulent as to its claim, in the same manner and with like effect as an individual creditor can. It would be strange indeed, and a reproach to the administration of justice, if the State in such a case would have less rights and less power to procure what is justly due it than one of its citizens in a like situation; that if a citizen were defrauded the courts were open to him for redress, but the State might with impunity be defrauded out of its just claims. The State, then, under the circumstances, had the same right to maintain a suit to set aside the fraudulent conveyance as a citizen would have had if he had recovered a judgment against the defendant, George Burkholder.

2. *The property of the Waters-Pierce Oil Company upon its insolvency became a trust fund for the benefit*

of its creditors.—When the Waters-Pierce Company transferred its assets to the Pierce Oil Corporation and distributed the proceeds of the sale among its stockholders, it was left without means of any kind. The funds arising from the sale of its assets are, as respects creditors, the substitutes for the things sold, and as such they are subject to the same liabilities as the things sold before the transfer. This doctrine was laid down by this court in the early case of *Railroad Company* v. *Howard*, 7 Wall. 409:

> Equity regards the property of a corporation as held in trust for the payment of the debts of the corporation, and recognizes the right of creditors to pursue it into whosesoever possession it may be transferred, unless it has passed into the hands of a bona fide purchaser; and the rule is well settled that stockholders are not entitled to any share of the capital stock nor to any dividend of the profits until all the debts of the corporation are paid.
>
> Assets derived from the sale of the capital stock of the corporation, or of its property, become, as respects creditors, the substitutes for the things sold, and as such they are subject to the same liabilities and restrictions as the things sold were before the sale, and while they remained in the possession of the corporation. Even the sale of the entire capital stock of the company and the division of the proceeds of the sale among the stockholders will not defeat the trust nor impair the remedy of the creditors, if any debts remain unpaid, as the creditors in that event may

> pursue the consideration of the sale in the hands of the respective stockholders, and compel each one, to the extent of the fund, to contribute *pro rata* towards the payment of their debts out of the moneys so received and in their hands.

And to the same effect are *Curran* v. *State of Arkansas*, 15 How. 307, and *Blake* v. *McClung*, 172 U. S. 254. As to the right to proceed against certain of the stockholders, without joining all, see *Hatch* v. *Dana*, 101 U. S. 205.

CONCLUSION.

It is respectfully submitted that the petition for writ of certiorari should be denied.

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